

**BEFORE THE LAND USE HEARINGS EXAMINER  
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Moss & Associates, Inc.	)	<b><u>FINAL ORDER</u></b>
for approval of a preliminary plat to divide 38-acres	)	
into 29 lots in the RC-1 zone at 18108 NE 122nd	)	<b>PLD 2004-00048<sup>1</sup></b>
Avenue in unincorporated Clark County, Washington	)	<b>(Camellia Subdivision)</b>

**A. SUMMARY**

1. The applicants request approval to divide the 38-acre site into 29 lots. A new single-family detached dwelling will be built on all but one of the proposed lots. The applicant will retain the existing home on proposed lot 22. All proposed lots will comply with the minimum dimensional standards the RC-1 (Rural Center, 1-acre minimum lot size) zone. Clark Public Utilities and Hazel Dell Sewer District will provide domestic water and sanitary sewer service respectively. The applicants will dedicate right of way for and will improve the eastern portion of the site's NE 179<sup>th</sup> Street frontage, between proposed NE 120<sup>th</sup> Avenue and NE 122<sup>nd</sup> Avenue, to County road standards. The applicants propose to dedicate a public easement for the future extension of NE 170<sup>th</sup> Street between NE 120<sup>th</sup> Avenue and the west boundary of the site. The applicants will extend a new public cul-de-sac street into the site from NE 170<sup>th</sup> Street, proposed NE 120<sup>th</sup> Avenue. The applicants will provide a public easement between the northern terminus of 120<sup>th</sup> Avenue and the north boundary of the site to accommodate a potential future public road through the site. The applicants will extend three private cul de sac streets into the site from NE 120<sup>th</sup> Avenue (proposed Leaf Court, Petal Court and Stem Drive) to provide access to the remainder of the site. All but one of the proposed lots will have driveway access to one of the proposed public or private streets. The existing residence will retain its existing driveway access to NE 122<sup>nd</sup> Avenue. The applicants propose to collect storm water from impervious areas of the site and direct it to biofiltration swales and detention facilities throughout the site for treatment and detention. The applicants will release treated stormwater to the existing on-site wetlands and ditches at less than predevelopment rates.

2. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. County staff recommended that the examiner approve the application subject to conditions as amended at the hearing. See the Development & Environmental Review Staff Report & Recommendation to the Hearing Examiner dated October 13, 2004 (the "Staff Report"). The applicants accepted those findings and conditions as amended without objections or corrections. Two area residents testified in support of the application. One person testified in writing with objections and concerns. Exhibit 16. No one else testified orally or in writing. Disputed issues or concerns in the case include the following:

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<sup>1</sup> This decision also addresses SEP2004-00032, WET2004-00005 and ARC2004-0032.

a. Whether it is feasible to collect, treat and detain stormwater runoff from the site in compliance with CCC 13.29;

b. Whether the location of the sewer connection for this site will impact future development on adjacent properties; and

c. Whether the applicants can be required to improve NE 179<sup>th</sup> Street west of 120<sup>th</sup> Avenue.

3. Based on the findings provided or incorporated herein, the examiner approves the subdivision subject to the conditions at the conclusion of this final order.

## **B. HEARING AND RECORD**

1. The examiner received testimony at a public hearing about this application on October 28, 2004. That testimony and evidence, including a videotape of the public hearing and the casefile maintained by the Department of Community Development (“DCD”), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Josh Warner summarized the Staff Report and showed photographs of the site. He noted that the applicants modified the preliminary stormwater plan to address concerns raised by County staff and the state Department of Ecology (the “DOE”) in Exhibit 37.

3. County wetland biologist Brent Davis requested the hearings officer modify condition of approval B.2 to require that the applicants show wetlands W11 and W13 on the final engineering plans.

4. County development engineer Ken Burgstahler testified that the applicants will construct attached sidewalks with curbs to direct stormwater adjacent to the public roads on the site. He opined that the proposed design is superior to detached sidewalks without curbs that the Code ordinarily requires in the RC-1 zone.

5. Adam Beck appeared on behalf of the applicants and accepted the findings and conditions in the Staff Report as amended without objections. He testified that the applicants will not detain stormwater within roadside ditches abutting public roads. The applicants may detain stormwater within roadside ditches abutting private roads on the site. The applicants will treat all stormwater runoff using bioswales or other accepted Best Management Practices (“BMPs”) prior to releasing the runoff to public ditches or the wetlands on the site. The applicants will not use filter strips for treating stormwater runoff.

6. Area residents Lee Moon, and Terri Young testified in support of the application. They opined that the proposed development is compatible with existing developments in the area.

7. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions recommended by County staff as amended at the hearing.

### **C. DISCUSSION**

1. County staff recommended approval of the preliminary subdivision plat and related applications, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicants accepted those findings and conditions without exceptions.

2. The examiner concludes the affirmative findings in the Staff Report, as amended, show the proposed preliminary plat and related applications should be approved, because they do or can comply with the applicable standards of the County Code and Revised Code of Washington, provided the applicants comply with recommended conditions of approval as amended at the hearing. The examiner adopts the affirmative findings in the Staff Report, as amended, as his own.

3. The applicants are required to collect, treat and detain stormwater runoff from impervious areas on the site. CCC 13.29. County engineering staff expressed concerns with the applicant's original stormwater plan. The applicants submitted a revised stormwater plan in response to staff's concerns. Sheet 4/4 of Exhibit 32. Based on the revised plan the applicants propose to collect stormwater runoff in roadside ditches and swales, detain runoff in private roadside ditches and/or in detention ponds and treat runoff using bio filtration swales or other approved BMPs. County engineering staff concluded, based on the revised plan, that it is feasible to design stormwater facilities for the proposed development that comply with CCC 13.29. There is no substantial evidence to the contrary. The applicants will be required to provide a final stormwater plan with additional detail and calculations demonstrating that the stormwater facilities actually comply with the applicable criteria.

4. Mr. Lear argued, Exhibit 16, that the applicants should be required to connect to the public sewer along the east line of the site. He argued that the proposed sewer connection at 179<sup>th</sup> Street and 120<sup>th</sup> Avenue "may cause flow problems for the entire area." However Mr. Lear failed to provide any support for this opinion. The Hazel Dell Sewer District (the "Sewer District") testified that it is feasible to provide sanitary sewer service to the proposed development. See Tab 9 of Exhibit 7. Therefore the application complies with CCC 13.08A. The examiner finds that the Sewer District is in the best position to determine the optimal location for sewer connections to this site and the potential impact of the connection on future development in the area. The Sewer District can consider the design of the proposed sewer connections during the final engineering

review. The examiner has no jurisdiction to regulate the specific location of sewer connections.

5. Mr. Lear argued that the applicants should be required to extend NE 179<sup>th</sup> Street west of NE 120<sup>th</sup> Avenue “for future development and release of stagnant water.”

a. Based on his understanding of *Dolan v. City of Tigard* and the record in this case, the examiner finds that the applicants cannot be required to construct additional road improvements as a condition of approval of this subdivision.

i. The *Dolan* case allows the County to impose an exaction as a condition of approval only if it serves a legitimate public purpose, there is an essential nexus between the exaction and the impacts of the development, and the cost of the exaction is roughly proportional to the impact of the development based on an individualized determination. The County has the burden of proof to show a condition complies with these requirements. In the absence of such a showing, an exaction imposed by a condition of approval may be an uncompensated taking of private property in violation of the 5th Amendment to the U.S. Constitution.

ii. There is no dispute that an extension of 179<sup>th</sup> Street would serve a legitimate public purpose in that it would further the County’s goal of providing additional east-west cross circulation in the area.

iii. The examiner concludes that there is an essential nexus between the proposal and the need for east-west circulation. The proposed development will generate additional traffic on area streets, increasing congestion and the need for additional east-west circulation in the area. Construction of additional frontage improvements west of 120<sup>th</sup> Avenue on this site west of 120<sup>th</sup> Avenue will facilitate the future extension of this street and connect with existing 179<sup>th</sup> Street to the west. Such a connection will alleviate the impacts of that additional traffic to some extent. Therefore there is a nexus between the required improvements and the impacts of the use.

iv. However there is no substantial evidence in the record that the cost of constructing additional improvements is roughly proportional to the impact of the development. The County failed to provide *any* evidence comparing the cost of offsite improvements to the impact of the development. Therefore the examiner cannot find that the cost of additional improvements is roughly proportional to the impact of the development.

(A) The applicants will dedicate an easement for the future extension of 179<sup>th</sup> Street, including additional easement width necessary to allow construction of a full-width roadway in the vicinity of the house located on Parcel 195376-000. This is required by condition of approval A-4.

b. The applicants are required to accommodate stormwater runoff from the new pavement on 179<sup>th</sup> Avenue. However the applicants are not otherwise required to

remedy existing “stagnant water” problems in the area. There is no substantial evidence that the proposed development will cause or exacerbate existing stagnant water problems. Therefore there is no essential nexus between the stagnant water problem and the proposed development. Applicants are not required to remedy all perceived and existing deficiencies in the vicinity of a development.

#### **D. CONCLUSION**

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PLD 2004-00048 (Camellia Subdivision) and related applications in general conformance with the applicants’ proposal (Exhibit 32) and the plans and reports associated with this proposal (Exhibits 7, 8, 9, 26 and 29. This approval is granted subject to the requirements that the applicants, owner or subsequent developer (the "applicant") shall comply with all applicable code provisions, laws and standards and the following conditions.

**A. Conditions that must be met prior to Final Plat approval and recording; or if improvements are approved by the county for bonding or other secure method, such conditions shall be met prior to issuance of Building Permits per CCC, Sections 40.350.030(C)(4)(i) & (j) and 40.380.040N.**

- A-1** The existing barn and outbuilding on proposed lots # 20 & #21 shall be removed prior to final plat.
- A-2** Wetland W11 shall be shown on the Final Plat with the required wetland buffer.
- A-3** The Final Plat shall show wetland buffers that are at least 50% of the required base buffer width with the exception of any approved wetland buffer road and utility crossings.
- A-4** The applicant shall provide an easement to Clark County over the south 30 feet of this plat for the future NE 179<sup>th</sup> Street. This easement shall be widened as necessary to provide adequate room to construct the entire width of this street in the vicinity of the house located on Parcel 195376-000.
- A-5** The applicant shall provide an easement to the county extending from the end of NE 120<sup>th</sup> Avenue northeasterly to the westerly right-of-way line of NE 122<sup>nd</sup> Avenue (SR 503), then curving northerly parallel to this right-of-way line to the north boundary of this plat. This easement shall be a minimum of 50 feet wide and meet the alignment requirements for a Rural Local Access road defined in Table 12.05A.120-4 of the Transportation Standards.
- A-6** NE 120<sup>th</sup> Avenue must comply with the requirements of Table 12.05A.120-4 for a Rural Local Access Road, and Drawing 25 of the Transportation Standards. These

requirements include, but are not limited to a minimum pavement width of 24 feet and a minimum right-of-way width of 50 feet. The cul-de-sac bulb shall have a minimum roadway radius of 45 feet and a minimum right-of-way radius of 50 feet. Additional right-of-way or easements may be required where necessary to accommodate slopes, sight distance or other features necessary for maintenance or to enhance safety. This road shall also have 5-foot wide sidewalks. Curbs with attached sidewalks are acceptable.

- A-7** The private roads must comply with the requirements of Table 12.05A.120-4 for a Private Road, and Drawing 27 of the Transportation Standards. These requirements include, but are not limited to a minimum roadway width of 20 feet and a minimum easement width of 30 feet. The minimum intersection radius shall be 25 feet. The minimum centerline radius shall be 60 feet. Additional easements may be required where necessary to accommodate slopes, sight distance or other features necessary for maintenance or to enhance safety. The proposed private roads shall be paved 25 feet back from the nearest edge of the travel lane of the public roads. Curbs with attached sidewalks, though not required, are acceptable. The cul-de-sac bulbs shall have a minimum roadway radius of 45 feet and a minimum easement radius of 50 feet to comply with Drawing 30 of the Transportation Standards.
- A-8** The applicant shall provide a private road maintenance agreement for the private road as required in CCC 12.05A.770(7). This agreement must include the owners of the appropriate lots using the private road for access among those responsible for the maintenance of this road.
- A-9** The applicant shall dedicate sufficient right-of-way and construct sufficient improvements to obtain a minimum half-width right-of-way of 30 feet and a minimum half-width paved roadway of 20 feet with a 6-foot wide detached sidewalk for the portion of NE 179<sup>th</sup> Street between NE 120<sup>th</sup> Avenue and NE 122<sup>nd</sup> Avenue (SR 503). An attached sidewalk in conjunction with a curb is acceptable.
- A-10** This development is subject to the Stormwater and Erosion Control Ordinance, CCC 13.29. The construction of single-family homes, and their normal appurtenances and accessory structures are exempt from Section 13.29.305 (Water Quality Treatment) Section 13.29.310 (Quantity Control), and Subsection (D) (Conveyance Systems) of Section 13.29.310.
- A-11** Significant revisions to the stormwater plan may be required at the time of final engineering review.
- A-12** For any proposal to place detention facilities upstream of water quality treatment, the applicant shall be required to provide evidence acceptable to Engineering Services that the proposed facility will provide effective long-term water quality treatment that will not burden the public with maintenance or operational

requirements which exceed those required of existing, standard county-approved BMPs.

**A-13** A final stormwater control plan and final technical information report (T.I.R.) shall be submitted for approval in compliance with Section 13.29.530. In addition to refining and confirming the preliminary stormwater design report, the final plan and report shall also include (but not be limited to) the following:

- Compliance with the Wetlands Protection Ordinance CCC 13.36 for stormwater facilities located in and near the wetlands.
- An off-site analysis extending a minimum of ¼ mile downstream from the site shall be submitted, to comply with CCC 13.29.305(B)(1) for all discharge points. This analysis shall be conducted to consider the impact of increased water quantity resulting from the reduction of pervious area in this development. Calculations shall be submitted documenting that the stormwater structures along SR 503 downstream from this development have adequate capacity to carry the additional stormwater draining from this development. This documentation shall be signed and stamped by an engineer licensed in the State of Washington.
- An analysis of the erosion, sedimentation, and pollution potential at the outlets of the system, and a minimum ¼ mile downstream.
- Evidence that the vegetative filter strips comply with the requirements of CCC 13.29.305. Specific requirements for filter strips are listed in CCC 13.29.305(D)(5).
- Conveyance calculations and details of the proposed control structures and metering devices from the ponds shall be required.
- Compliance with the various requirements for county-owned facilities called out in CCC 13.29 for all facilities within the public right-of-way. Adequate access must be provided to all portions of the facility for maintenance.
- It shall address all other stormwater and erosion control issues identified in this decision.

**A-14** Stormwater facilities not located within the public right-of-way shall be privately owned in compliance with CCC 13.29.340(A), and maintained by the neighborhood association per the county's Stormwater Facilities Maintenance Manual, as adopted by Chapter 13.26A. These facilities shall be located within an easement. Adequate access must be provided to the facilities to perform maintenance.

**A-15** An erosion control plan for the development shall be submitted in compliance with Section 13.29.540. The erosion control plan shall be submitted and approved prior to any construction. The applicant shall submit a copy of the approved plan to the Chief Building Official. Failure to comply with the approved erosion control plan can result in a stop-work order, citation, or other code enforcement actions.

- A-16** This development activity performed shall be supervised by an individual who shall have successfully completed formal training in erosion and sediment control during construction by a recognized organization acceptable to the director.
- A-17** Additions to water mains supplying the required fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval.
- A-18** The applicant shall provide fire hydrants such that the maximum spacing between hydrants does not exceed 700 feet and such that no lot or parcel is in excess of 500 feet from a fire hydrant as measured along approved fire apparatus access roads.
- A-19** The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact the District 11 Fire Department at 360-687-2171 to arrange for location approval.
- A-20** The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus.

<p><b>B. Conditions that must be met <u>prior to Engineering Construction Plan Approval</u></b></p>
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- B-1** Final Wetland Permit approval shall be required.
- B-2** Wetlands W11 and W13 shall be shown on the Engineering Construction plans with the required wetland buffer.
- B-3** The Final Enhancement/Mitigation Plan shall provide the proposed wetland enhancement at a 4:1 ratio for all Category 4 wetland impacts unless proposed mitigation measures otherwise comply with CCC 13.36.420 (2).
- B-4** The Final Enhancement/Mitigation plan and Engineering Construction shall clearly address any additional wetland impacts required for stormwater detention.
- B-5** The Final Enhancement/Mitigation plan and Engineering Construction plans shall clearly show the total wetland buffer impact for all road crossings as well as adequate buffer function replacement measures (i.e. 1:1 replacement and or 2:1 enhancement).
- B-6** The Final Enhancement/ Mitigation plan and Engineering Construction plans shall show the precise location and design of any stormwater facilities located within the wetland buffer. These plans shall also locate, and identify protection measures for, any woody vegetation greater than four inches diameter that might be affected by grading required to construct the facilities.



- B-7** The Engineering Construction shall show wetland buffers that are at least 50% of the required base buffer width with the exception of any approved wetland buffer road and utility crossings.

### **C. Conditions that must be met prior to issuance of Building Permits**

- C-1** Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.
- C-2** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- C-3** Impact fees shall be paid prior to issuance of a building permit for each lot as follows:
- School Impact Fees: \$3,000.00 (Battle Ground School District)
- Proposed lot #22, where an existing house is located, is exempt from the impact fee charge.
- If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees shall be recalculated according to the then-current ordinance rate.

### **D. Notes Required on Final Plat**

The following notes shall be placed on the final plat:

- D-1 Archaeological:**  
"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- D-2 Wetland Covenants:**  
"Clark County Wetland Protection Ordinance (Clark County Code Chapter 13.36) requires wetlands and wetland buffers to be maintained in a natural state. Refer to the Conservation Covenant recorded in conjunction with this plat for limitations on the maintenance and use of the wetland and wetland buffer areas identified on the face of this Plat."

**D-3 Private Roads:**

"Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance."

**D-4 Driveways:**

"Direct access to or from SR 503 is not permitted. This restriction extends west along the north side of NE 179<sup>th</sup> Street approximately 290 feet to the right-of-way jog. The existing house on Lot 22 will be permitted continued use of the existing access."

**D-5 Driveways:**

"No direct lot access is allowed onto NE 179<sup>th</sup> Street."

**D-6 Driveways:**

"Driveways accessing NE 120<sup>th</sup> Avenue shall be paved from the edge of the public road to the right-of-way, or to 20 feet from the edge, whichever is greater."

**D-7 Privately Owned Stormwater Facilities:**

"The neighborhood association is responsible for long-term maintenance of the privately owned stormwater facilities."

**D-8 Erosion Control:**

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

**D-9 Fire Protection:**

Unless waived by the fire district chief fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection.

**D-10 Fire Protection:**

The applicant shall provide and maintain a six-foot clear space completely around every fire hydrant.

**D-11 Fire Protection:**

Plans for gates that obstruct fire apparatus access roads shall be submitted to and approved by the Fire Marshal prior to their installation

**D-12 Impact Fees:**

"In accordance with CCC 40.610, except for 1 lot (#22) designated on the final plat as waived, the School Impact Fees for each dwelling in this subdivision are: \$3,000.00 (Battle Ground School District). The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated \_\_\_\_\_, and expiring on \_\_\_\_\_. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

<b>E. Standard Conditions</b>
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This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

**Land Division:**

- E-1** Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

**Water Wells and Septic Systems:**

- E-2** Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Well/Septic Abandonment Letter" must be submitted, the Evaluation Letter will specific the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy).

**Wetlands and Buffers:**

**E-3 Wetlands:**

The requirements of CCC Section 13.36.250 shall apply even if no impacts are proposed. These requirements include:

- a) Demarcation of wetland and/or buffer boundaries established prior to, and maintained during construction (i.e. sediment fence;
- b) Permanent physical demarcation of the boundaries in a manner approved by the Development Services Manager (i.e. fencing, hedgerows, berms etc.) and posting of approved signage on each lot or every 100 ft of the boundary, whichever is less;
- c) Recording a conservation covenant with the County Auditor that runs with the land and requires that the wetlands and buffers remain in natural state; and,
- d) Showing the wetland and buffer boundaries on the face of the Final Plat and including a note that refers to the separately recorded conservation covenant.

**Final Construction Plan Review:**

**E-4 Transportation:**

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 12.05A.

**E-5 Stormwater:**

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 13.29.

**E-6 Pre-Construction Conference:**

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

**E-7 Erosion Control:**

Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 13.29.

**E-8 Erosion Control:**

For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.

**E-9 Erosion Control:**

Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

**E-10 Erosion Control:**

Erosion control facilities shall **not** be removed without County approval.

**E-11 Excavation and Grading:**

Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).

**E-12 Excavation and Grading:**

Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

DATED this \_\_\_\_\_ day of November, 2004.

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Joe Turner, AICP  
Clark County Land Use Hearing Examiner